

PK 2905 P2858

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

CONSERVATION EASEMENT DEED

We, Aurise A. Randall-Batchelder and David W. Batchelder, husband and wife, of 3 Barker Lane, Town of Stratham, County of Rockingham, State of New Hampshire, (hereinafter sometimes referred to as the "Grantor" which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs and/or assigns),

for consideration paid, grant to the Town of Stratham, situated in the County of Rockingham, State of New Hampshire, with a mailing address of 10 Bunker Hill Avenue, Stratham, NH 03885, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter sometimes referred to as the "Grantee" which word shall, unless the context clearly indicates otherwise, include the Grantee's successors and/or assigns),

with WARRANTY covenants, in perpetuity the following described Conservation Easement on land in the Town of Stratham, County of Rockingham, State of New Hampshire, more particularly described in Appendix A, attached hereto, pursuant to New Hampshire RSA 477:45-47 and RSA 221-A, exclusively for conservation purposes, listed below.

1. CONSERVATION PURPOSES

A. To assure that the Property will be retained forever in its undeveloped, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property.

B. To preserve the land subject to this easement for outdoor recreation by and/or the education of the general public, through the auspices of the Grantee, its permitted successors or assigns.

C. To preserve open spaces, particularly the productive farm and/or forest land, of which the land area subject to this easement granted hereby consists, for the scenic enjoyment of the general public and consistent with with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space in the state by providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, by maintaining the character of the state's landscape, and by conserving the land, water, forest, and wildlife resources", to yield as significant public benefit in connection therewith; and with NH RSA Chapter 221-A, which states: "The intent of the program is to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire by acquiring lands and interests in lands of statewide, regional, and local conservation and recreation importance."

JAN 14 9 34 AM '92

0001578

PK2905 P2859

Said purposes are all consistent and in accordance with the U.S. Internal Revenue Code, with respect to that certain parcel of land (herein referred to as the "Property") being unimproved land, more particularly bounded and described as set forth in Appendix "A" attached hereto and made a part hereof.

This Conservation Easement Deed does not constitute homestead property.

Mill Valley Farm encompasses nearly 100 acres, of which 57.73 will be placed under conservation easement. The conservation easement encumbers the "core" part of the farm, which is bisected by a town road, Barker Lane. The town road is unpaved and unimproved, but is passable by car. The grantors operate a farm market, selling vegetables, fruits and fresh cut flowers that are produced on site. The protected property also has about 1900 feet of frontage on the Winnicut River, which is one of seven rivers feeding the Great Bay Estuarine System. This freshwater frontage is very remote and undeveloped, and is accessible only by a foot trail along its banks. Extensive wetland areas along the length of Winnicut provide habitat for heron, beaver, moose, ducks, and deer. These significant conservation values are set forth in detail in baseline documentation entitled "Batchelder Conservation Easement: Baseline Documentation" on file with the Grantee.

The Conservation Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry as described below, and provided that the capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities and that such activities will not cause significant pollution of surface or subsurface waters or soil erosion.

i. For the purposes hereof "agriculture" and "forestry" shall include agriculture, animal husbandry, floricultural and horticultural activities; the production of plant and animal products for domestic or commercial purposes, for example the growing and stocking of Christmas trees or forest trees of any size capable of producing timber, and the processing and sale of products produced on the Property, for example, pick-your-own fruits and vegetables, maple syrup and other forest products; and the cutting and sale of timber and other forest products not detrimental to the purposes of this easement.

ii. Agriculture and forestry on the Property shall be performed to the extent reasonably practicable in accordance with a coordinated management plan for the sites and soils of the Property. Forestry and agricultural management activities shall be in accordance with the current scientifically based practices recommended by the U.S. Cooperative Extension Service, U.S. Soil Conservation Service, or other government or private natural resource conservation and management agencies then active. Management activities shall

PK2905 P2860

not materially impair the scenic quality of the Property as viewed from public waterways, great ponds, public roads, or public trails.

B. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and may be sold, transferred, devised or conveyed only in its entirety.

C. No dwelling, tennis court, swimming pool, dock, aircraft landing strip, tower, mobile home or other structures and improvements of any kind shall be constructed, placed or introduced onto the Property except for ancillary structures or improvements such as a road, utility, dam, fence, bridge, culvert, barn, maple sugar house or shed which only may be constructed, placed or introduced onto the Property as necessary in the accomplishment of on-site, land-based agricultural, forestry, conservation or non-commercial outdoor recreational uses of the Property and only so long as they are not detrimental to the purposes of this easement.

i. Such structures or improvements shall be sited to have minimal impact upon: the conservation values of the Property; the scenic views of and from the Property as viewed from public roads, trails and waters; the historic and archeological values; and forestry and agricultural production on the Property.

D. No removal, filling, or other disturbances of the soil surface, nor any changes in topography, surface or sub-surface water systems, wetlands, or natural habitat shall be allowed until all necessary federal, state and local permits and approvals are secured and unless such activities:

i. Are commonly necessary in the accomplishment of the forestry, agricultural, conservation, habitat management, or non-commercial outdoor recreational uses of the Property; and

ii. Do not harm state or federally recognized rare or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and

iii. Are not detrimental to the purposes of this easement.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as necessary in the accomplishment of the agricultural, forestry, conservation or non-commercial outdoor recreational uses of the property and not detrimental to the purposes of this easement.

F. There shall be no mining, quarrying, excavation or extraction of rocks, minerals, gravel, sand, top soil or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of paragraphs A, C, D, or E above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

PK2905 P2861

G. There shall be no dumping, injection, or burial of materials then known to be environmentally hazardous, including vehicle bodies or parts.

H. The property shall not be used to meet any designated open space requirements as a result of the provisions of any subdivision approval or land use regulation process or in calculating allowable unit density.

3. RESERVED RIGHTS

A. Grantor reserves the right to maintain, repair or replace in-kind those utilities existing on the Property on the date of this conveyance. Such utilities shall include but not be limited to power and communication lines, subsurface sanitary waste disposal systems, and water supply facilities.

B. Grantor reserves the right to create ponds for the purpose of agriculture, fire protection, or wildlife habitat enhancement, in accordance with a plan developed by the U.S. Soil Conservation Service or other similar agency then active.

C. The Grantor must notify the Grantee in writing before exercising the aforesaid reserved rights provided for in this easement.

D. Grantor reserves the right to post against vehicles, motorized or otherwise.

E. Grantor reserves the right to post against hunting around livestock fields when livestock are present and against access on agricultural cropland during the planting and growing season but only with respect to annually harvested crops and on forest land during the harvesting of forest products or during the establishment of orchards, tree plantations, or Christmas trees.

F. Grantor reserves the right to prohibit campfires.

4. AFFIRMATIVE RIGHTS OF GRANTEE

A. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to maintain boundaries, to determine compliance and to enforce the terms of this Conservation Easement Deed and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Conservation Easement Deed.

B. There is hereby conveyed pedestrian access to, on and across the Property for hunting, fishing and transitory passive recreational purposes, but not camping, by members of the public; but the Property may be posted against such access or otherwise restricted by the Grantee in the public interest.

C. The Grantee shall have the right to post signs on the Property identifying it as land protected under the New Hampshire Land Conservation Investment Program for the uses allowed under this Conservation Easement.

5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. Grantor agrees to notify the Grantee in writing within 10 days after the transfer of title of the Property.

B. Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

6. BENEFITS AND BURDENS

A. The burden of the easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of said easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferrable only to the State of New Hampshire or the U.S. Government or any subdivision of either of them consistently with Section 170 (c) (1) of the U.S. Internal Revenue Code, as amended, which government unit has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this easement. Any such assignee or transferee shall have like power of assignment or transfer. In accordance with RSA 221-A, under which this Conservation Easement Deed is acquired, "The sale, transfer, conveyance, or release of any such land or interest in land from public trust is prohibited." (RSA 221-A:11)

7. BREACH OF EASEMENT

A. When a breach of this Easement comes to the attention of the Grantee, it shall notify the then owner (Grantor) of the Property in writing of such breach, delivered in hand or by certified mail, return receipt requested.

B. Said Grantor shall have 30 days after receipt of such notice to undertake those actions, including restoration, which are reasonably calculated to swiftly cure the conditions constituting said breach and to notify the Grantee thereof.

C. If said Grantor fails to take such curative action, the Grantee, its successors or assigns, may undertake any actions that are reasonably necessary to cure such breach, and the cost thereof, including the Grantee's expenses, court costs and legal fees shall be paid by the said Grantor, provided the said Grantor is determined to be directly or indirectly responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the property resulting from natural events beyond Grantor control, including, and limited to fire, flood, storm, and earth movement or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part

PK 2905 P2863

the Easement conveyed hereby, the Grantor shall, and the Grantee at its sole option may, act to recover the full damages resulting from such taking with all incidental or direct damages awarded in the condemnation proceedings and all expenses incurred by them thereby to be paid out of the damages recovered.

8. The balance of the damages (or proceeds) recovered shall be divided between Grantor and Grantee in proportion to the full and fair market values of the respective interest of the Grantor and Grantee in that part of the Property condemned, as determined immediately after the execution and delivery of this Conservation Easement, taken as a proportion of the sum of said values. Any increase in value attributable to improvements made after the date of this grant shall accrue to the party (Grantor or Grantee) who made the improvements. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth.

9. MERGER OF FEE WITH CONSERVATION EASEMENT INTEREST

The Grantor and the Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the conservation easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the conservation easement, or any portion thereof, granted hereunder under the doctrine of "merger" or any other legal doctrine. The intent of the parties is to protect the Property in accordance with New Hampshire Revised Statutes Annotated 221-A, which provides in section 11 that "the sale, transfer, conveyance, or release of any such land or interest in land from public trust is prohibited" and that "no deviation in the uses of any land or interest in land so acquired to uses or purposes not consistent with the purposes of this chapter shall be permitted."

10. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

EX 2905 P2864

The Grantee by accepting and recording this Conservation Easement Deed for itself, its successors and assigns, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein provided for and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Conservation Easement Deed is delivered.

IN WITNESS WHEREOF, We have hereunto set my our hands this 14TH day of JANUARY, 1992.

Robert L. Barker
Witness

Aurise A. Randall-Batchelder
Aurise A. Randall-Batchelder

Robert L. Barker
Witness

David W. Batchelder
David W. Batchelder

The State of New Hampshire
Rockingham, ss.

Personally appeared Aurise A. Randall-Batchelder and David W. Batchelder who acknowledged the foregoing to be their voluntary act and deed.

Before me,

William G. Abbott
Justice of the Peace/Notary Public

WILLIAM G. ABBOTT, Notary Public
My Commission Expires June 27 1995



ACCEPTED: Town of Stratham

By:

Mark Wood

Title:

Selection Town of Stratham
Duly Authorized

P2905 P2865

APPENDIX A

Meaning and intending to describe parcels or tracts of land in the Town of Stratham, County of Rockingham, N.H., shown as portions of Lots 50 and 51 on "Plan of Conservation Easement, Land Conservation Investment Program, Land of David and Aurise Batchelder in Stratham, N.H.", prepared by Emanuel Companies, Inc., of Stratham, dated June 1991, recorded in the Rockingham County Registry of Deeds as Plan #D-21427 and as described in a Deed recorded in said Registry at Book 2585, Page 0214, being further bounded and described as follows:

Beginning at a point being a T-bar on the southeasterly sideline of Union Road, so-called, and at land now or formerly of Merrie L. Nelson; thence along land of said Nelson the following courses and distances:

South $52^{\circ} 38' 50''$ East two hundred twenty (220.00) feet to a T-bar;

North $44^{\circ} 04' 46''$ East one hundred eighty and fifty-four hundredths (180.54) feet to a T-bar;

South $45^{\circ} 29' 25''$ East forty-eight and ten hundredths (48.10) feet to a point;

South $55^{\circ} 11' 16''$ East thirty-one and eighty-nine hundredths (31.89) feet to a point;

South $45^{\circ} 21' 26''$ East fifty-eight and thirty-five hundredths (58.35) feet to a T-bar;

North $46^{\circ} 19' 46''$ East thirty-one and sixty-nine hundredths (31.69) feet to a T-bar and at land now or formerly of Stephen F. and Donna M. Horton; thence

South $52^{\circ} 38' 50''$ East twenty-three and ninety-three hundredths (23.93) feet along land of said Horton to an iron pin found and at land now or formerly of Mary Jane Keane; thence

South $47^{\circ} 55' 18''$ East fifty-two and fifty-four hundredths (52.54) feet along land of said Keane to an iron pin found and at land now or formerly of William C. and Joan B. Chandler; thence

South $47^{\circ} 55' 18''$ East seventy-five and sixty-five hundredths (75.65) feet along land of said Chandler to a T-bar and at other land of Batchelder; thence along other land of Batchelder the following courses and distances:

South $38^{\circ} 33' 13''$ West two hundred ninety-six and ninety-four hundredths (296.94) feet to a T-bar;

PK2905 P2866

South $45^{\circ} 02' 25''$ East two hundred (200.00) feet to a T-bar on the northwesterly sideline of Barker Lane, so-called; thence

South $40^{\circ} 16' 29''$ West two hundred twenty and sixty-three hundredths (220.63) feet along said Lane to a point at the centerline of an intermittent stream; thence along said centerline of said stream approximated by the following tie lines:

South $69^{\circ} 54' 21''$ East forty-seven and six hundredths (47.06) feet;

North $71^{\circ} 25' 30''$ East fifty-eight and twenty hundredths (58.20) feet;

North $58^{\circ} 40' 41''$ East one hundred one and twenty hundredths (101.20) feet;

South $69^{\circ} 57' 44''$ East two hundred twenty-two and seventy-nine hundredths (222.79) feet to a point at the high water mark of Mill Pond, so-called, (also known as Jewell Pond); thence along said high water mark of said Pond approximated by the following tie lines:

South $18^{\circ} 11' 19''$ West ninety and thirty-nine hundredths (90.39) feet;

South $26^{\circ} 22' 50''$ West seventy-five and thirty-four hundredths (75.34) feet;

South $08^{\circ} 07' 57''$ West one hundred twenty-seven and seventy-five hundredths (127.75) feet;

South $00^{\circ} 43' 49''$ West one hundred eleven and thirty-five hundredths (111.35) feet;

South $16^{\circ} 20' 24''$ East ninety-four and eight hundredths (94.08) feet to a T-bar at the start of a stonewall and at land now or formerly of Rudolph and Lucy Bume; thence

South $15^{\circ} 37' 57''$ West five hundred thirteen and thirty-four hundredths (513.34) feet along, in part, said stonewall and, in part, land of said Bume and along land now or formerly of C. Anthony and Suzanne M. Bourn to a point at the end of a stonewall; thence

South $15^{\circ} 32' 14''$ West one hundred eighty-nine and forty-two hundredths (189.42) feet along land of said Bourn to a drill hole found at the start of a stonewall; thence

South $34^{\circ} 15' 28''$ East sixty-nine and ninety-two hundredths (69.92) feet along land of said Bourn and along said stonewall to a drill hole found in a corner of said stonewall and at land now or formerly of Charles W. and Katherine Peabody; thence along land of said Peabody the following courses and distances:

South $14^{\circ} 59' 00''$ West fifty-seven and sixty-eight hundredths (57.68) feet along said stonewall to a drill hole found at the end of said stonewall;

PK2905 P2867

South $12^{\circ} 52' 44''$ West four hundred ninety-two and twenty-six hundredths (492.26) feet to a point at the start of a stonewall;

South $12^{\circ} 18' 43''$ West one hundred four and thirty-three hundredths (104.33) feet along said stonewall to a drill hole found at the end of said stonewall and at land now or formerly of Evans Trust; thence along land of said Trust and along the remains of a barbed wire fence the following courses and distances:

North $85^{\circ} 59' 01''$ West one hundred sixty-one and seventy-four hundredths (161.74) feet to a Pine with wire;

North $87^{\circ} 00' 43''$ West two hundred forty and twenty-one hundredths (240.21) feet to a fence post;

North $86^{\circ} 29' 22''$ West two hundred seventy-five and seventeen hundredths (275.17) feet to a thirty (30) inch Beech tree;

North $85^{\circ} 29' 04''$ West eighty-six and fifty-two hundredths (86.52) feet to the start of a stonewall;

North $83^{\circ} 57' 09''$ West one hundred and fourteen hundredths (100.14) feet along said stonewall to the end of said stonewall;

North $89^{\circ} 44' 16''$ West twenty-five and fifty-two hundredths (25.52) feet to an eighteen (18) inch Pine tree;

North $00^{\circ} 17' 45''$ West eighteen and forty-four hundredths (18.44) feet to a drill hole found at the start of a stonewall;

North $17^{\circ} 14' 30''$ East fifty-one and twenty-six hundredths (51.26) feet along said stonewall to a drill hole found at the end of said stonewall;

North $18^{\circ} 27' 47''$ East one hundred sixty-six and eighty-four hundredths (166.84) feet to a drill hole found at the start of a stonewall; thence

North $14^{\circ} 26' 58''$ East ninety-five and seventy-three hundredths (95.73) feet along, in part, land of said Trust and, in part, said stonewall and along the remains of a barbed wire fence and along land now or formerly of Robert T. Jr. and Marsha Wiggin to a Pine with wire; thence continuing along land of said Wiggin the following courses and distances:

North $17^{\circ} 59' 38''$ East five hundred nineteen and sixty-three hundredths (519.63) feet along the remains of a barbed wire fence to a T-bar to be set at the start of a stonewall;

North $45^{\circ} 11' 55''$ West two hundred ninety-seven and one one-hundredth (297.01) feet along said stonewall to the end of said stonewall;

PK2905 P2868

North 45° 30' 30" West four hundred twenty-nine and five hundredths (429.05) feet to a T-bar and at other land of Batchelder; thence along other land of Batchelder the following courses and distances:

North 47° 00' 01" East two hundred fifty (250.00) feet to a T-bar ;

North 47° 57' 38" West three hundred fifty (350.00) feet to a T-bar on the southeasterly sideline of Union Road, so-called; thence along said Road the following courses and distances:

North 47° 0' 01" East one hundred fifty-seven and six hundredths (157.06) feet to the centerline of Barker Lane, so-called;

North 47° 00' 01" East seventy-one and twenty-seven hundredths (71.27) feet to a point at the start of a stonewall;

North 47° 25' 48" East two hundred thirty-two and fifty-nine hundredths (232.59) feet along said stonewall to a point;

North 45° 58' 11" East one hundred seventy-five and thirty-two hundredths (175.32) feet along said stonewall to a point;

North 44° 57' 57" East two hundred twenty-seven and seventy-one hundredths (227.71) feet along said stonewall to the end of said stonewall;

North 44° 44' 45" East one hundred seventy-two and seventeen hundredths (172.17) feet along, in part, a stonewall to the end of said stonewall;

North 44° 04' 46" East one hundred ten and fifty-four hundredths (110.54) feet to the point of beginning, said tract containing fifty-seven and seventy-three hundredths (57.73+/-) acres, more or less.

EXCEPTING the interest of the Town of Stratham in Barker Lane, so-called, as shown on said Plan and recorded in said Registry at Book 2, Page 60 in 1790.